

**50.03 Issues and Burden of Proof — Both Principal and Agent Sued—Agency Denied—
Principal Sued Under Respondeat Superior Only**

Defendant [principal's name] is sued as the principal and the defendant [alleged agent's name] as his agent. [It is denied that any agency existed.] [It is (also) denied that [alleged agent's name] was acting within the scope of his authority as an agent of the defendant [principal's name] at the time of the occurrence.] Plaintiff has the burden of proving that [defendant [alleged agent's name] was the agent of defendant [principal's name] [and] [defendant [alleged agent's name] was acting within the scope of his/her authority as an agent of the defendant [principal's name]] at the time of the occurrence.

If you find that the defendant [alleged agent's name] [was the agent of the defendant [principal's name]] [and] [was acting within the scope of his authority] at the time of the occurrence, and if you find [alleged agent's name] is liable, then both are liable. If you find that [alleged agent's name] is not liable, then neither defendant is liable.

If you find that the defendant [alleged agent's name] is liable but was not acting [as an agent of the defendant [principal's name]] [or] [within the scope of his authority as an agent of the defendant [principal's name]] at the time of the occurrence, then the defendant [principal's name] is not liable.

Instruction, Notes on Use and Comment revised July 2015.

Notes on Use

This instruction should be used only where agency or the scope of the agency or both are in dispute as an issue of fact and where principal and agent are both sued in the same case. If there is a basis of liability against the principal independent of the agency, this instruction should be modified accordingly or replaced by other instructions.

If the principal is sued alone and the agency is in dispute as an issue of fact, IPI 50.04 should be used. When agency is not disputed use IPI 50.01.

If the negligence charged includes acts or omissions prior to the act or omission at the time of the occurrence, then the phrase “at the time of this occurrence” should be modified to read “at and before the time of this occurrence.”

This instruction should be used along with IPI 21.01.

Comment

This instruction applies where both principal and agent are parties defendant and the agency is the only basis of liability against the principal, but some phase of the agency is in dispute as an issue of fact. *Hogan v. City of Chicago*, 319 Ill.App. 531, 536; 49 N.E.2d 861, 863 (1st Dist.1943); *Fox River Distilling Co. v. Andrichik*, 175 Ill.App. 305, 307 (2d Dist.1912); *Drury v. Barnes*, 29 Ill.App. 166, 169 (3d Dist.1890). *See Baikie v. Luther High School South*, 51 Ill.App.3d 405, 409-410; 366 N.E.2d 542, 545-546; 9 Ill.Dec. 285, 288-289 (1st Dist.1977) (not error to refuse this instruction when agency is admitted in pleadings and proved by evidence, and IPI 50.01 was given).

This instruction has been modified in light of *Powell v. Dean Foods Co.*, 2013 IL App (1st) 082513-B, 7 N.E.3d 675, Ill.Dec. 837 (2013).